IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 5600 of 2000

For Approval and Signature:

HON'BLE MR.JUSTICE SHARAD D.DAVE

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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GUJARAT INDUSTRIAL COOP. BANK LTD. - Petitioner(s)

Versus

R N PATEL - Respondent(s)

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Appearance :

MR DIPAK R DAVE for Petitioner No(s).: 1.

MR RD RAVAL for Respondent No(s).: 1.

MR NILESH M SHAH for Respondent No(s).: 1.

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CORAM : HON'BLE MR.JUSTICE SHARAD D.DAVE

Date : 30/06/2005

ORAL JUDGMENT

1. By filing this petition, the petitioner has prayed for the writ of mandamus or writ of certiorari or any other appropriate writ, order or direction quashing and setting aside the award passed by the

Labour Court, Vadodara in Reference (LCV) No.825 of 1986 dated 12.10.1999.

2. It is the case of the petitioner that the petitioner is a Banking company and having its branches in more than one state. It is the case of the petitioner that the respondent was working as a peon in its Raopura branch and because of his continuous misconduct, the show cause notice came to be issued on 26.09.1984. The respondent gave reply to the show cause notice by his letter dated 05.10.1984. It is the case of the petitioner that after completion of the inquiry, the respondent came to be suspended by order dated 26.11.1984. It is the case of the petitioner that thereafter, second show cause notice has been issued and after considering all the facts and circumstances, the respondent came to be dismissed from service on 02.04.1986.

3. It appears that thereafter the respondent raised industrial dispute against his termination by approaching the State Government. It is the case of the petitioner that the State Government mechanically referred the matter to the Labour Court without appreciating the fact that it has no power to refer such dispute under the Industrial Disputes (Banking and Insurance) Companies Act. The said reference was numbered as Reference (LCV) No.825 of 1986. Ultimately, the Labour Court, by its judgment and award dated 12.10.1999 directed the petitioner bank to resinstate the respondent with continuity of service and 85% of back wages and has also ordered to pay cost of Rs.1,000/- to the respondent.

4. Being aggrieved and dissatisfied with the aforesaid judgment and award dated 12.10.1999 passed by the Labour Court, Vadodara in Reference (LCV) No. 825 of 1986, the petitioner has preferred the present petition for the appropriate relief.

5. Heard the learned advocates for the parties.

6. Learned advocate for the petitioner has raised manifold contentions. It is mainly contended by the learned advocate appearing for the petitioner that the facts of the present case are squarely covered by the decision of this court in Special Civil Application No. 9424 of 1998 and therefore, the State Government or its officers have no power whatsoever to refer any industrial dispute either to the Labour Court or the Industrial Tribunal. Learned advocate appearing for the petitioner has not pressed other submissions.

7. On the other hand, learned advocate Mr.R.D.Raval has appeared for the respondent and has tried to justify the order passed by the Labour Court, Vadodara. He submitted that this court has very limited power under Article 227 and this court may not exercise the powers under Article 227 of the Constitution of India for mere correcting the legal mistake or error. It is therefore requested to dismiss the present petition.

8. Having heard the learned advocates for the parties and perused the material on record, I am of the opinion that the petitioner is a banking company having its branches in more than one state. The petitioner bank has its branches all over the state of Gujarat and one branch at Silvas, Dadar and Nagar Haveli i.e. Union Territory. In that event, it would not be competent for the State Government or any officer or authority subordinate to such Government to refer such industrial dispute to any Tribunal or authority concerning any banking company. In this view of the matter, when the reference by the State Government was incompetent at the threshold and could not have been proceeded further with by the Labour Court, Vadodara. The facts of the present case are squarely covered by the decision of this court in Special Civil Application no. 9424 of 1998. In para 7 of the oral order dated 09.03.1999 in Special Civil Application

No. 9424 of 1998, this Court (Coram : R.Balia,J (as he then was)) has observed as under :

> "By parity of reasoning, the petitioner company which is having its branches in the State of Gujarat as well as in Dadara Nagar Haveli is a banking company within the meaning of Banking Companies Act, because it transacts the banking business and is also a banking company which has branches in more than one State. Once this condition is fulfilled, the provisions of the Industrial Disputes Act (Banking and Insurance Companies Act), 1949 declares in no uncertain terms that it shall not be competent for a State Government or any officer or authority subordinate to such Government to refer such industrial dispute to any Tribunal or authority concerning any banking company. The conclusion is irresistible that the State Government had no jurisdiction to act as an appropriate Government in respect of any dispute relating to the petitioner company which is a "banking company". Therefore, the reference by the State Government at inception was incompetent and could not have been proceeded further with by the Labour Court."

9. Under the circumstances, the judgment and award passed by the Labour Court dated 12.10.1999 in Reference (LCV) No. 825 of 1986 suffers from illegality since the reference by the State Government was incompetent from its inception. In this view of the matter, impugned judgment and award passed by the Labour Court dated 12.10.1999 in Reference (LCV) No. 825 of 1986 deserves to be quashed and set aside. Accordingly, this petition is allowed. The impugned judgment and award passed by the Labour Court dated 12.10.1999 in Reference (LCV) No. 825 of 1986 is quashed and set aside. Rule is made absolute.

(SHARAD D DAVE, J)

srilatha